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MISSOULA, MT

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PATRICK E. DUFFY

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

DONALD RAY GORDON,)	CV 05-32-M-JCL
)	
Petitioner,)	
)	
vs.)	ORDER
)	
MIKE MAHONEY,)	
)	
Respondent.)	
_____)	

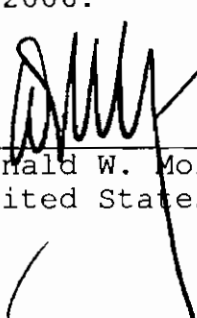
United States Magistrate Judge Jeremiah C. Lynch entered Findings and Recommendations in this matter on October 30, 2006. Petitioner did not timely object and so has waived the right to de novo review of the record. 28 U.S.C. § 636(b)(1). This Court will review the Findings and Recommendation for clear error. McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc., 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been committed." United States v. Syrax, 235 F.3d 422, 427 (9th Cir. 2000).

This case is before the Court on a Petition for Writ of Habeas Corpus filed under 28 U.S.C. § 2254. Judge Lynch's preliminary review of the Petition identified two defects in the

Petition, i.e., that the claims are procedurally defaulted and that the claims are time barred. Petitioner submitted a brief presenting his arguments as to why the two grounds for dismissal identified by Judge Lynch do not apply. Judge Lynch considered the Petitioner's arguments and found that the Petitioner failed to establish either of the two exceptions to the procedural default rule set forth in Coleman v. Thompson, 501 U.S. 722, 750 (1991). Petitioner conceded that he did not meet the "actual innocence" exception, and Judge Lynch found that Petitioner's attempted reliance on the cause and prejudice exception fails because he has not shown that his failure to comply with the State's procedural rules is due to some objective factor external to the defense. Although the Petitioner's claim is also likely time-barred, Judge Lynch did not address the statute of limitations issue because he found that dismissal of the Petition is warranted on procedural default grounds. I can find no clear error with Judge Lynch's recommendation and therefore adopt it in full.

Accordingly, IT IS HEREBY ORDERED that the Petition is DISMISSED due to procedural default.

DATED this 6th day of December, 2006.



Donald W. Molloy, Chief Judge
United States District Court